

**LAKE COUNTY BOARD of ADJUSTMENT**  
**July 10, 2013**  
**Lake County Courthouse Large Conference Room (Rm 317)**  
**Meeting Minutes**

**MEMBERS PRESENT:** Clarence Brazil, Sue Laverty, Mike Marchetti, Paul Grinde, Steve Rosso

**STAFF PRESENT:** Joel Nelson, LaDana Hintz, Robert Costa, Lita Fonda

Mike Marchetti called the meeting to order at 4:00 pm. He offered 2 corrections to the minutes. On pg. 2 in the second paragraph on line 4, 'sell that at' should be 'sell that as'. In the middle of the third paragraph on that page, in the ninth line, 'hurtle' should be 'hurdle'. Robert referred to pg. 7 and the sentence (just above public comment) that said, "Marc Vert, agent for the Redmonds, had no further comment." He suggested that should be Roland Redmond, the applicant. Steve asked about the third paragraph on pg. 3, in the third and fourth lines, where 'that was possibly supposed to be' should be 'that was not supposed to be'. Sue agreed that 'not' should be inserted. Paul asked about Robert's comment. Robert said Mark Vert didn't speak. Lita thought Mark V said something since he was in attendance. She suggested taking out that line; it didn't have to be there. Mike said to strike the whole line.

**Motion made by Steve Rosso, and seconded by Paul Grinde, to approve the June 12, 2013 meeting minutes as corrected. Motion carried, all in favor.**

**NZGH 2000 LTD CONDITIONAL USE & VARIANCE AMENDMENT—FINLEY POINT (4:04)**

Robert Costa presented the staff report. (See attachments to minutes in the July 2013 meeting file for staff report.)

Steve asked if the Board was also responsible for a zoning conformance permit. Robert explained they were reviewing the conditional use and variance amendment requests. Steve confirmed with Robert this was because of the square footage and height change. Robert clarified they proposed something that they didn't end up building. Steve asked if the other guest house was without hitches. Robert explained it was not yet issued yet. One condition was to clarify the first guest house, and they had to do environmental health stuff. Steve asked about the impervious surface calculation. Were there paved parking areas or driveways? Robert said there were none that he observed.

Sue asked why it wasn't built to what the Board approved. Robert wasn't sure. Mike checked if gravel was included in the impervious surfaces. Robert replied that it was not, under these regulations.

George Gibson, architect representing the Bakers, spoke on behalf of the applicants. They were back before the Board to clean up the 2008 project. The property contained 2 guest houses since the '40's or '50's. The Bakers wanted to be sure to redo the septic.

He didn't know what happened after the issuance of the 2008 variance such that the zoning conformance permit was not issued.

*Public comment opened:* None were offered. *Public comment closed.*

Mike saw this as clean-up work. Clarence thought it was strange that the square footage would change from 1400 to over 2000. It was a big difference. It frequently happened. Sue agreed this was bothersome. Paul thought the property was big enough to support it. Clarence said when you ended up being a 1000 square feet more, that was a big thing. A few hundred was something else. Robert clarified that the footprint didn't change up to a 1000 square feet. The living area was 2000. He wasn't sure if the 2008 staff report clarified exactly what the living area was proposed to be. Clarence asked about the previous footprint. Robert said the previously proposed footprint was 1404 square feet. The resulting structure was 1404 square feet. They added additional space to the structure in terms of decks and patios and things like that. Clarence hoped the staff would inform on that in the future.

Mike touched on the 2008 documentation. Robert clarified that the 2008 staff report didn't talk about whether or not it needed conditional use approval for certain living area. That was what he couldn't speak to. They did have plans from the review. Steve thought it looked like the footprint increased by 260 square feet. The rest of the increase in living area may have been a determination of the office on the garage floor. It may not have originally been included as living area. Robert repeated that the 2008 staff report didn't really discuss living area. Sue agreed with Steve.

**Motion made by Mike Marchetti, and seconded by Paul Grinde, to approve the conditional use and variance request as written with findings of fact and with staff recommendations. Motion carried, all in favor.**

Mike Marchetti recused himself from the Board for the next item and handed the chair to Sue Laverty.

#### **ROSKAM CONDITIONAL USE—EAST SHORE (4:20)**

LaDana Hintz presented the staff report. (See attachments to minutes in the July 2013 meeting file for staff report.) Regarding the letters from Paula Kestell that were included in the packet, she noted she forgot to list them on pg. 10. Sue asked about the licenses required from the State in 2004. LaDana replied this was unclear in talking to Environmental Health. On pg. 20 in #1, she corrected a typo by removing the words 'consisting establish a bed and breakfast'. For item #3, the condition currently said this approval would be non-transferable to future property owners. It would be up to the Board whether it was non-transferable or if it ran with the land. Through Environmental Health and State licensing, if a new owner came in, they would have to get licenses for that facility. It didn't make a difference with the zoning.

Steve observed the report mentioned impacts of a bed and breakfast (B & B) would be reduced from the current impacts from vacation rental. It appeared to him there was no

intention of ending the vacation rental. LaDana thought Scott Roskam could speak to that better than she could. He had bookings into next year that he would need to honor. She didn't think the Lake County stance would be to tell him he couldn't honor those bookings if he got his license from Environmental Health. Steve checked that he needed licenses to continue the vacation rental. LaDana agreed that he was required to be licensed. Steve continued that if the applicant didn't have those licenses now, he would have to tell those folks with reservations that they couldn't come until he got his license. LaDana didn't know if Environmental Health would tell him that at this point.

Steve asked if the staff recommendations were based on the assumption that the vacation rentals would or would not stop at some point. LaDana reiterated from the report that it seemed like the vacation rental could be grandfathered if he could demonstrate it had been ongoing. Steve pointed out that if the vacation rentals went on, someone could call and rent the whole house. Someone could call to rent a bedroom. If the B & B was not approved and no one called to rent the whole house, then no one would be staying there. The impacts were actually less if the Board didn't approve this. If this was approved, it would allow Scott to have people there when no one wanted to rent the whole house. Unless the vacation rentals stopped, additional opportunities to rent individual rooms actually increased impacts. It was something to think about. Joel observed that it worked both ways. While he operated the B & B, impacts would be less than operating as a vacation rental. Steve noted this assumed the applicant made the decision to do 'either/or' rather than to wait to see who called on the phone.

Clarence thought a B & B would have a lot less impact than a vacation rental. Steve agreed that this would be true if the vacation rentals stopped. Clarence explained he sold his home on Finley Point to someone who made it into a vacation rental, where over 100 people visited on one day. They ruined the septic system in that one day. He thought a vacation rental would have more impact than a B & B. Steve asked if reduction of the amount of vacation rental was considered in the making of the recommendation. Joel said if it was a grandfathered vacation rental, it could be booked and operated from March through the end of October, or whatever the season was, with almost no limits. If some of that use was replaced with B & B use, you'd be reducing the impacts overall. LaDana commented the other option was to let them continue as a vacation rental, with all the impacts. Steve said they'd see whether or not they could actually expect a reduction when the applicant presented his plan. It seemed to him if there was a choice of someone paying \$300 for a bedroom or \$3000 for the house, he knew what he'd pick as a business owner.

Sue said it appeared there were a lot of violations in the zoning, with RV's and the way of advertising. Nothing in the conditions appeared to nip or stop those. LaDana replied those needed to go away, especially to address the issues with Environmental Health. Scott was working currently to get his licenses and Environmental Health would review what was going on to approve or disapprove his licenses. She thought those things would be cleaned up during that process. They would outline what he could use as far as a vacation rental and B & B. Steve checked that the owner had to move off site when he used this as a vacation rental since the whole property had to be rented out. LaDana

confirmed that he shouldn't be living on site or in the RV or the shop. Steve asked how that was enforced. Based on the packet, it looked to him like there hadn't been any kind of enforcement or consequences. LaDana said through the licensing process, they were trying to address the issues. There was a zoning permit issued for the shop that said it was for an office, not sleeping quarters. They could enforce zoning on that if they knew he was sleeping there, but they had to see it when they were there. They couldn't be the bed patrol. If she saw no bed, she couldn't testify to that in court. Joel said they didn't become aware of much of this until recently. Through this process, they were trying to get things resolved. Some would take care of themselves through the licensing.

Clarence said in the past, most of these things came to the Planning Dept.'s attention through neighbors. That was mostly how these things got enforced. Sue asked about attaching a condition to #2 to say clearly that the owner/manager of the property was required to reside on-site within the single-family residence. LaDana clarified this was the requirement of the licensing from the State that said if you ran a B & B, you had to live in the residence while you were running it. Sue checked with LaDana that no other structures could be used for [sleeping]. LaDana said that Environmental Health would put in specifics and conditions of the license when they wrote up the license for the State. Clarence noted the RV's and so forth were already prohibited in the zoning to begin with. They shouldn't have been there in the first place. LaDana understood where Steve and Sue were coming from. She thought this was covered through the licensing requirements and cleaning up the sanitation end of things. They were whittling away to get it back in compliance. It wouldn't happen overnight.

Regarding the manager, Clarence knew that with the Finley Point review, there had been a big discussion over the owner/manager item. The people on Finley Point were up in arms that a manager could be allowed, so in that zoning district, the zoning said it had to be the owner. He gave an example. He didn't know how this applied in the East Shore regulations. LaDana replied these were the same conditions applied to a 2010 B & B in the East Shore Zoning District, and the Board approved those. Clarence asked if the East Shore regulations specified an owner or a manager. LaDana answered that it didn't say either. Joel thought when they dealt with just one B & B on a property, it wasn't a big deal. It would be a big deal if there were 3 B & B's. Clarence said you could buy 4 houses in a row for 4 B & B's if you were out of state, and hire a manager. LaDana said whoever was running the B & B had to live in the structure. You couldn't live in 4 structures. Joel clarified that Clarence meant someone might hire 4 managers to live in the structures. Clarence reiterated that in the Finley Point zoning, it specified the owner had to live there, not a manager. Joel said that wasn't what was said in the East Shore regulations. Clarence agreed that East Shore was different. He hoped it was still in the Finley Point regulations.

Sue asked if the owner were to withdraw all of this, including the licensing, then could he potentially continue doing what he was currently doing without repercussions. Joel replied they would still have to try to get towards compliance. He had issues if he were to just continue. Joel didn't know that they'd isolated exactly what those would be and what actions would be taken. They would move forward with some action.

Scott Roskam, the owner/applicant, spoke on behalf of his application. Regarding the RV question, it was not his intention to rent out spaces to an RV, even if they belonged to the group renting the house, and he had not done this. It was a courtesy of allowing guests who came in an RV to park it and plug in the electricity. He didn't offer water or sewer hookups, although he didn't say anything to those who put the hose in, and he didn't charge extra. He didn't say anything about it or think of it. Hearing about zoning and the concern for that, he would be glad to prohibit people from staying in an RV on his property or hooking it up to utilities. It seemed like it should be all right for those who arrived in an RV to at least park it on the property while they were staying there.

Scott addressed Steve's 'either/or' question. He described this as a side business for himself. His own full-time business had 4 employees. It was his intention to enjoy the property and the people who came to stay. A B & B gave him a better opportunity to share with people. He operated an organic cherry/apple/peach/fruit orchard and was more sustainable, with chickens and sheep. People liked that sort of thing. He thought sharing it with them would be more rewarding for him than a big group that was having a reunion or family get-together. It was his intention for his own quality of life to transfer his efforts to a B & B. He would need to continue the opportunity for vacation rentals through at least next summer when he had bookings.

Scott pointed out in 2004 when he got established, he inquired at the Lake County offices about what he needed to do this. He was told he needed to comply with current permits for septic and so forth, and basically that he needed to get a license from the State and apply with them, which he did in 2004, and pay B & B taxes to the state. He had his state tax forms and other documents with him. He showed some of these to the Board. (See attachments to minutes in the July 2013 meeting file for document handouts.) Scott said he complied with the rules and regulations that were in place in 2004. There wasn't a County license required at the time. He noted the statement in the staff report that he stated he started his business, Custom Sharpening, in a shop building in 2000 was false. He had the business for over 30 years. He moved it over 20 years ago. He bought the property in question in 1989, completed a shop building in 1990 and moved into it with 4 employees, whose names he had with him. He moved the business from Los Angeles to here full time. He'd been operating it continuously since 1990. At that time, there wasn't zoning in place. One reason he moved here was that he wanted to live near the place he worked. He wanted to take care of his own orchard, ongoing with what he was doing for a living. He enjoyed that.

Scott brought up the second story. He didn't expand his business by doing that. He replaced an office trailer that was permanently parked and attached to his shop building. He removed the trailer and built a nicer office. It didn't increase what they were doing.

Regarding the temporary dwelling of a trailer, Scott said he would be glad to comply if he continued. If he was denied the B & B conditional use permit, it would be his intention to continue his vacation rental business, which he started legitimately in 2004 in compliance with the rules and regulations. He would try to comply with every current

rule and regulation. He felt since he did begin when some of these rules and regulations didn't exist that he shouldn't be penalized. He would contest things that seemed unreasonable. The temporary dwelling issue went away if he was able to run a B & B, which he intended to do full time. It might take him some time to get up to the same income level. He had another place to live in the summer. It varied. Right now, he owned a house in Kalispell, and he lived there part time last summer. He enjoyed the lake and staying there. He guessed he was using the same use as granted for agricultural use that people with active commercial orchards were granted, to have campers or RVs permanently there for the seasonal use, either pickers or orchard workers. Hired people stayed there in a camper, working and picking for him. His son was there now, although he had another home and didn't live there. It was a legitimate commercial orchard. It was mostly during cherry season and maybe some of when the peaches came in, which closely coincided with July and August. He'd had a trailer on the property since 1990, before there was regulation. The trailer had been replaced by newer ones but didn't seem out of place to him at the time. He'd just been continuing the same thing. His house wasn't close to the lake; it was by the highway. The trailer in a grove of trees was cooler and pleasant and right by the lake. He personally enjoyed that and enjoyed using the lake that way.

Scott touched on other concerns that he thought were in the report. He marked his boundaries with signs. He thought LaDana saw the signs marking the boundaries at the lake where people could easily trespass on the neighbors' property. He'd had those in place for years, as well as written rules describing to guests where they could and could not go. There was quite a bit of adequate parking. He hadn't had a problem with people trying to park on neighbors' property. He had some letters from other neighbors who weren't here tonight but hadn't submitted letters in time to be in the packet. Sue suggested he could address those in the public comment portion of the meeting. Scott addressed Sue's questions about if he could continue if he didn't get licensing or a conditional use permit. The biggest concern was if there were more people there than in a single-family dwelling. That impacted water quality and lake quality and so forth. He was concerned with that since he started. For him, the septic and sewer were the biggest concern, since he was very close to the lake. He had records to submit to show complete records since 2006 that he hired a company called Action Septic Pumping from Kalispell. Every 12 to 18 months, they came out and inspected the septic tank, which had an access cover for regular inspections. He paid for it to be pumped if it showed more than what was normal. He didn't want to pollute the lake.

Steve referred to the evidence of the vacation rental. Was there a license for this? Joel explained the license was for public accommodations. Scott said the State provided him with an account number and forms. He described some of the inspections, applications and so forth that he had been required to do. He also paid a 7% bed tax. He asked and did what they told him.

Steve checked with staff that Scott didn't have a license he needed, and they were helping him to try to do this. LaDana affirmed. She thought he'd been paying the bed tax. She didn't think there was an official public accommodations license, and that was needed.

Sue commented that licensing regulations did change. Joel added that enforcement was an evolving thing, with the public accommodation licensing. It was an unfunded mandate. Both Flathead County and Lake County, from what he heard, weren't chasing them down. Even with complaints, it was hard to chase down every complaint. Sue was concerned that the owner seemed to feel, since he purchased the property prior to zoning, if he didn't like the zoning he wasn't going to comply with it. Scott thought she was hearing that, for instance, if he built a shop and moved there knowing he could operate a business and live on the same property, he would be resistant to someone telling him that now he couldn't. That seemed unreasonable, because he established his life, business and work here. He said the same of the vacation rental business. If he complied with what was in place when he came here, it seemed unreasonable to say legislation had been enacted to say he couldn't do that anymore. He was trying to comply. He was downsizing, and had fewer employees than in 1990. He was trying to have fewer people come to rent. He was trying to do less. It seemed it was nice to fit into what the character of the area wanted to go towards. If it could suit him, he was willing to bend and give a little bit. He could specify times for vacation rental versus B & B. If it had to be 'either or', he understood. There was a period where he'd like to accommodate the existing vacation rentals during say July and part of August. Other than that, he'd only do it as a B & B. Not both, not at the same time, and not just because he had a vacancy to fill. That seemed reasonable.

Clarence clarified he was speaking generally when he referred to people who would buy more property. Scott said he would be happy to be restricted that he, as the owner, would live in the house. Clarence explained the reason for the grandfathering when zoning was brought in, so you wouldn't be thrown out of what you were doing at the present time. Scott understood. He could see that the vacation rental was farther outside the zoning as it existed. He was trying to get closer to a better idea of what they'd like to see. He wasn't asking to start a business. He was trying to maintain what he reasonably could expect to continue but to modify it so it was more in keeping with what neighbors or others would say. The lake quality was important to him too. He lived on the lake and enjoyed the lake.

*Public comment opened:*

Kathy O'Farrell: She read her letter of public comment. (This letter was included in the staff report. See attachments to minutes in the July 2013 meeting file for staff report.)

Sue thanked for the public comment, and clarified that the Board had received written public comment that had been submitted with the staff report packets. A quick synopsis of those submitted comments would be great. Keeping the comments to a couple of minutes would be appreciated, so everyone could speak.

Teresa Frankfurth: She was the neighbor adjacent to Scott Roskam's property directly to the south since 2005. Scott operated his vacation rental during the entire time of her ownership. She began operating a vacation rental as well in 2005. Until this day, she hadn't heard about the problems the O'Farrell family was having with the noise. She

hadn't received a complaint. For her personally, being directly adjacent to a vacation rental property, they'd had the interaction and the phone calls about tenants doing this or that. They hadn't had a problem resolving issues from noise or people going onto another property. Problems had been resolved quickly and amiably. When she began her vacation rental in fall of 2005, she did this only once in a while. Most of the time, she lived there as a resident. Peace and quiet and enjoyment of the lake had also been her goal. It hadn't been disturbed. It may sound biased, because that's what she did as well, but she didn't find the B & B's and vacation rental to be a problem as an adjacent neighbor. She didn't live on her property currently because of the regulations. She was living in Hot Springs in a former rental unit she had there. She was here to do work on the house, maintain it, mow the lawn and enjoy the lake a little. She asked if it was still possible to submit a letter.

Sue thought Teresa's testimony here today was sufficient for her support.

Dave O'Farrell: He was south of these two places. They'd been involved in zoning since 1991. He thought if people went back to that time, there wasn't a commercialization of things. He'd like to go back to 2004 and see where the vacation rentals were grandfathered when it wasn't done before the original zoning came into effect. If you went back to 1991, it stated there was no commercialization except B & B's, that you had to get a review. He asked if Teresa Frankfurth, who said she opened hers in 2005, went through a review for a B & B or vacation rental or if she just opened it up with no consequences. When he complained, he was told they didn't have the manpower to enforce it. They really didn't care what people did.

Jackie McCoy: She had a hobby farm kitty-corner across the highway from Scott Roskam, roughly 1500 to 2000 feet away. She was surprised that Teresa Frankfurth couldn't hear the partying. She could hear it loud and clear, all hours of the night at her house. It did disturb the neighborhood. Scott wasn't there a lot of the time. He stayed in Kalispell and had no idea what was going on there nor was he there to enforce with people. They had big parties there, with tents and RV's. They weren't respecting people's property. They went onto other's beaches and orchards. There was a problem here. It was an agriculture area. Many little cabins were around, mainly for the pickers. These were only used 3 weeks to a month in the year. Everyone understood that, around there. When you mixed parties and agriculture, it was really hard. A lot of spraying went on. Farmers got up early in the morning to do their thing, running tractors and so on, and liked to go to bed earlier. When people tried to party and recreate in the middle of a farming area, it wasn't conducive, in her opinion. She brought up sewer as another issues. The people didn't all go in to use the bathroom. They went out in the woods and where ever they had to. The farmers sprayed, and she believed there'd been complaints about someone poisoned by the spray. People had tents right up against the fence. It was an Ag area, and it was hard to mix it. There were issues that [the Board] needed to deal with. They needed to make up their minds if it was to be a recreational area or an agricultural area.



Pam Ford: She worked for Scott Roskam. She thought they'd overlooked the rental as being a part of the whole property, having a commercial business on the property and renting it out. To her, that indicated a conflict. With a commercial business there, you couldn't rent the whole thing. She worked for Scott starting in 2006 to 2010, and returned about a year and a half ago. She never saw him live elsewhere. He used the room in the office to sleep. He moved the bedding out the day before the Planning visit, which was an announced visit. He owned the property on which his ex-partner lived in, and she thought there was a restraining order, so he wasn't staying there. Maybe it was better, with the number of people who came to the property, that he could stay there and babysit them. The neighbors evidently had expressed concerns. She applauded Scott if he changed to a B & B. He only had a couple of bookings for next year that could be cancelled a year in advance, and go straight to a B & B. He could still rent and have the income, make the neighbors happier, with no more tents or campers. Why not? She thought some of the problems they would run into would be Scott trying to stretch it a little bit further. She highly recommended specific parameters for a B & B. She was glad to see that LaDana encompassed that in her report. The report was well thought out. Her other concern was when people had trouble with potential future problems on the property, they needed to know who to go to for resolution. Since 1991, a prohibited use for East Shore zoning was multi-family residential. She guessed that didn't pertain if you were just staying in a camper or in an office. Those were her concerns. It wasn't an easy decision and she wished the board luck.

Mike Marchetti: He spoke as a resident of the East Shore zoning district. He implored the Board to make it extremely clear and plain in the conditions of approval exactly what they were trying to approve. If it was assumed that RV's were not allowed on the property, it should be made explicit in the conditions of approval. It would be violated. He agreed with most of the comments that had been said. He requested that they be clear, very concise and leave no wiggle room, because violations would occur.

Scott Roskam: He had some letters that weren't given to the Board in time.

Sue asked if he could synopsise the letters.

Scott Roskam: He read letters from Don Clark II, who lived almost directly opposite him, one property to the north and across the highway, and from Terry Foss, who was directly diagonal to him to the north. Both letters were in support of his proposal. (See attachments to minutes in the July 2013 meeting file for the letter.)

*Public comment closed.*

Clarence said if the Board denied this B & B today, the owner could continue with what he was doing. It was grandfathered in. Denying this request wouldn't change what was going on. If they did approve this, there were a lot of conditions put in that the owner would have to abide by from now on, including no tents, no RV's, parking and those types of things. If the Board approved this, the residents would probably be better off than having a vacation rental where you would have a large number of people coming. If

you were to rent as a B & B, you'd only have 6 people there. Most B & B visitors were more like hotel visitors, where they stayed for the night, ate breakfast and got out. [The neighbors] might be better off if the Board approved this, than if they didn't. They couldn't stop a grandfathered use. [Dave O'Farrell] asked about that. Joel clarified that not everything was grandfathered. Clarence checked that the vacation rental was grandfathered. Joel said that determination had not yet been made. Clarence said they needed to know before voting on this whether it had been determined to be grandfathered. Joel said the owner hadn't provided the information that they needed to show that it was a grandfathered vacation rental.

Spontaneous public comments broke out. Sue reminded that public comment was currently closed. Joel continued that what staff said to the Board was you could have short term rental of a single-family residence and still have it be single-family residential. It didn't matter if it was a year or a few days. If it met the definition of single-family residential, it was single-family residential and not commercial. Steve said short-term vacation rental of single-family residential was listed as a permitted use in the current zoning regulations for the East Shore. Joel stressed that was the property as a whole. This wasn't rental of the property as a whole. They could've been grandfathered as a single-family residence as a vacation rental before. It didn't meet the terms of that permitted single-family residential rental as a whole. It wasn't commercial either. The shop was commercial. The vacation rental was not. Steve asked why he didn't meet the vacation rental under the current regulations, if he agreed to live off-site when there were renters. Joel explained that Scott wasn't renting the shop or the business. Steve asked if he would have to close his business when he had renters in the house to continue as a vacation rental. Joel said no, the vacation rental might meet the definition of the old definition of single-family residential. Vacation rentals weren't addressed in the old regulations. He didn't think that would be considered commercial because you could rent out a single-family residence for a month, a year or a day.

Steve questioned the second dwelling on the property, which was the trailer. Comments had been made that within this zoning district, there were other properties with 2<sup>nd</sup> dwellings for migrant workers. How did that work? Was it allowed under agricultural activities? What allowed someone to provide living for a migrant worker for the cherry orchard in this zoning district but would not allow Scott Roskam to live in his RV down by the lake? LaDana said it had to comply with the sanitation approval. Joel said there were some zoning issues with that, in that he obviously wasn't renting the property as a whole if he was living in the RV. It wasn't a B & B if he was living in the RV and not in the B & B. Sue referred to operating it agriculturally to have migrant workers living in temporary dwelling. Joel said that wouldn't be a B & B. Sue mentioned multiple businesses. Joel said that wouldn't be renting the property as a whole. He could be doing something that would be typically allowed, but it would bring him out of compliance if he were doing other things.

Clarence checked that this was not grandfathered in and he could be stopped from renting the place as a vacation rental. Joel said it was definitely an issue that Scott was staying in the RV. Clarence asked if he complied with that, could he still rent it as a vacation rental.

Joel said that in order to make that determination, Scott still had to furnish additional information so they could make a determination. LaDana said the Planning Dept. had to sign off on his vacation rental license that Environmental Health would issue for the State, just like they had to sign off on B & B licenses that Environmental Health would issue. He would have to demonstrate to Planning that he had been doing this, so they could sign off on it, or that he was grandfathered or whatever was demonstrated. Sue said that wasn't what was at issue with the Board. Clarence understood. He wanted to know if it was right or wrong to tell the people here that he could still rent it as a vacation rental. The owner just produced papers to show he'd paid taxes as a vacation rental since 2006. Was he grandfathered in? LaDana referred to the list in the report of things the owner could submit to Planning. They would work with him to come up with [inaudible] in demonstrating it. Scott said he brought them with him. (See attachments to minutes in the July 2013 meeting file for handouts). He had advertising records from 2004 and for two websites since 2004. Steve saw a date of 2005. Scott said that was the additional [second] site he added in 2005.

Joel didn't think they could make a definite determination as to what would happen if the applicant withdrew this application or if this Board denied the B & B application. [Staff] still needed to review this information and apply how the regulations worked in 2004 and 2005. Steve asked if they could put a condition on the approval that the vacation rental stop. LaDana asked for grounds or reason. It had to be justified. Joel said ideally you'd tie it to the regulations somehow, via the standards of evaluation or somehow that it was a prohibited use that wasn't grandfathered. What the applicant was asking for, was a conditional use for a B & B. It was listed as a conditional use. The regulations didn't say that B & B was subject to that being the only use on the property.

If the Board was to approve this as a B & B, Sue observed that condition #1 contained that the use of any other structure, permanent or temporary, to house B & B occupants was prohibited, unless Scott came back [for further review]. That would take care of the RV and tents, and the B & B would only have 6 in the house. Steve wondered what would stop him from having 20 more as a vacation rental. LaDana explained that when he got his license through Environmental Health, they would specify how many people could be on there at one time. That was specific to the license. Steve checked that was the license as a B & B. LaDana added as a vacation rental also. They hadn't narrowed down what those numbers would be. Environmental Health had been working on that. Sue pointed out they couldn't do both at the same time.

Steve checked that the vacation rental license would also say the maximum number of people who could rent the whole property as a vacation rental. LaDana said he didn't have this before because he didn't have the official license. Now it would be pretty specific on what he could have when he did a vacation rental and what he could have as a B & B. She highlighted the difficulty of regulating it if there were alternating times of B & B and vacation rental. The neighbors would be calling regularly with concerns. He could do both, but not at the same time. Steve thought it was reasonable to expect that if they approved the B & B, he could run a B & B one week, a vacation rental the next, and a B & B again the following week. It could be night-to-night. For him to feel confident

about approving something, he wanted to know what he was approving. He wanted to know what Environmental Health would say for the number of people and the use. What kind of use would be created by his approval? Joel replied a B & B. LaDana added it would be for a 3-bedroom B & B. He had to meet the State requirements, which said the owner had to live in a bedroom. He had 4 bedrooms. That was very specific. As far as the vacation rental, they couldn't settle yet on how many bedrooms he could use or how many people it could be. It wasn't like it would be 20 people. It was the same kind of system, whether it was a B & B or a vacation rental. She thought it might not seem clear, but what they were approving was probably ultimately 2 people to a bedroom. There were 4 bedrooms. Steve commented that would be 8 people. LaDana noted that would be for a vacation rental, but the Board wasn't approving a vacation rental. Joel reminded they were limited by their COSA and their septic system.

Sue liked where the conditions included that it was non-transferrable. She wanted to keep that as a condition. Joel checked that she meant not transferrable to other people. She confirmed. When Scott sold it, it was gone. Steve said the new owner would have to reapply for a B & B conditional use. LaDana thought that was a good point. At that point, the business could go away. The whole property would be changing. Clarence said he would have liked to know for sure if the applicant was grandfathered in, due to the complaints. If they voted this down, it wouldn't stop him from doing this if he were grandfathered in. As it was, they were looking at the B & B, which would eventually limit the number of people that he had there. That would be a lot of help to the neighbors. The people would come to have a nice night's sleep and leave. They wouldn't be there for a gigantic party. He'd seen a vacation rental next door to him with 100 people there.

Steve asked the current status. If Scott didn't have approval from Lake County Environmental Health and licenses weren't issued for either the vacation rental or the B & B right now, was he allowed to rent it? The County knew about it. LaDana replied not the B & B; maybe the vacation rental, because it had been ongoing. Environmental Health knew he was working with them to try to get the licenses. She didn't think they would tell him he couldn't do it because they understood he had bookings and he was working towards bringing it in to compliance. She didn't think they would shut him down, but that was really a question for them. Steve said Scott definitely couldn't operate as a B & B. He hadn't done that before. LaDana replied that he couldn't do that because he needed his planning approvals and that license. Then Planning would issue a zoning permit that would say he was good to go.

Steve checked that they couldn't put a condition on this about people living in RV's because of the migrant worker dwelling issue on other properties. Neighbors had presented complaints to the Board. It sounded to him like the Board couldn't do anything about it. Joel asked what he would do. Steve said they'd put a condition that if Scott operated as a B & B, he couldn't have big parties or people living in RV's, including the owner. Sue said it did say that. She read the section that stated use of any other structure, permanent or temporary, to house the B & B occupants was prohibited unless it was reviewed. Steve concluded that he couldn't live in the trailer down by the lake

anymore. LaDana agreed. It was against his COSA, his sanitation approval. That needed to cease.

Clarence asked about the migrant workers coming in with RV's and tents for cherry picking for 2 weeks. LaDana read a provision for agricultural workers on a seasonal basis from the zoning regulations. They had to comply with the requirements. Scott wasn't complying with the requirements. Steve said that as it stood, living in the trailer or the office while vacation renters were in the house had to stop. LaDana said the office was permitted as an office, not a guest house or sleeping quarters. Environmental Health permitted it as a knife shop. It wasn't permitted for living quarters. If Scott wanted that, he had to ask for that and get an approval.

Steve mentioned the law logs in the papers were full of calls from neighbors making noise. He thought if someone had a problem with neighbors making noise, you needed to call the sheriff. If you called them frequently enough, something would get done if you had a legitimate complaint. He thought people ought to make use of that. He didn't think there was something the Board could do about that situation.

Paul said approval was a step in the right direction. He didn't feel very comfortable with this; there were a lot of loose ends. Sue thought it would help clean things up and put them on the radar.

Motion made by Sue Lavery to grant the conditional use with the findings of fact and conditions of approval with a change in conditions #1, where in the first sentence, 'consisting establish a bed and breakfast' would be struck.

Steve suggested a condition #16 to say unpermitted use of the property must end. That was a problem for him with this application. There were tons of evidence that a lot of things had happened on the property that appeared to be prohibited uses. Joel suggested if the Board were to do this, to use the word 'unlawful' rather than 'prohibited'. 'Prohibited' could be grandfathered.

Sue withdrew her motion. She liked Steve's suggestion. Steve, Joel and Sue discussed wording. Joel asked if they expected the Planning Dept. to take action on any unlawful action on the property. Steve said whether or not the Planning Dept. was enforcement, there needed to be consequences. Clarence said if Scott did these things, if the neighbors saw and called in, someone would take some action. Joel said if it was truly illegal, and pointed out that it might take time. Clarence agreed. It would eventually get done. Steve wasn't sure if they needed to add a condition. Maybe it was enough to discuss the issue and make a point. Paul said it was almost redundant to do that because they would follow the regulations or not. Sue said if they did not, they would be in violation.

**Motion made by Sue Lavery, and seconded by Paul Grinde, to approve the conditional use with the findings of fact and conditions of approval with a change in conditions #1 (deleting 'consisting establishing a bed and breakfast' in the first sentence).**

Joel asked the Board to address condition #3. The intent was to not allow the conditional use to transfer. Usually when staff wrote this, they meant non-transferrable to other properties. The Board had mentioned making this non-transferrable to other properties or other individuals. Did that include if Scott came up with another name LLC? Sue said that her intent was if this transferred to another owner. Joel clarified with Sue that she intended Scott to be an interested party. Steve said if the property sold, the new owner would have to reapply for a conditional use. LaDana said that was how it operated with a license. Joel said [the new license] was easy to do. They renewed the license under a different name. The group considered wording. LaDana noted the business was currently in an LLC. Sue asked how to say the conditional use didn't run with the land. Joel confirmed with Sue that the conditional use was to be tied to this property. Sue added that it was also tied to this owner. Should the property transfer ownership to a new owner, the new owner would have to come in and apply for a conditional use if the new owner wanted to run B & B. The group further considered wording that would cover a change of ownership such that Scott was no longer involved.

Steve wasn't sure what this would accomplish. Joel said usually when you got an approval for a property, it stayed with the land. Steve asked if they approved a B & B at this location and Scott sold the property to a new owner, why wouldn't the Board let the new owner keep running the property as a B & B. Sue thought it was a trigger to make sure things got cleaned up in the new ownership. Steve thought they should have that already. If the B & B wasn't properly operated, they should go after that. If the owner was absentee while the B & B had clients, that was against the license. Whoever enforced the license would enforce that. The Board was saying that in this location, it was okay to run a B & B. He didn't know that it mattered who the owner was, as long as they got a license and operated within the licensing requirements and these conditions. He thought #3 could go away. Joel said they'd want to keep #3. They would want to specify that it would run with the land. Joel suggested wording to add to the end of #3: 'to other properties and shall run with the land'. The motion could be amended, if they liked that.

**Sue Laverty amended her motion to add a change to condition #3, appending 'to other properties and shall run with the land' to the end of the condition. Paul Grinde seconded the amended motion.**

**Motion carried, 3 in favor (Steve Rosso, Paul Grinde, Sue Laverty) and 1 abstention (Clarence Brazil).**

#### **OTHER BUSINESS (6:28)**

There would be items for next month. Sue thanked the Planning staff for their diligence.

**Sue Laverty, acting chair, adjourned the meeting at 6:28 pm.**